

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

**IN THE MATTER OF:**

**A&D Water Services, Inc.**

**PROCEEDING UNDER SECTION  
309(a) OF THE CLEAN WATER ACT,  
33 U.S.C. § 1319(a)**

**NPDES PERMIT NOS. NC0089095, NC0048658 )  
NC0067288, NC0073741, NC0030325 )**

) **ADMINISTRATIVE**  
) **ORDER ON CONSENT**  
)  
) **DOCKET NO. CWA-04-2021-0320**

**ADMINISTRATIVE ORDER ON CONSENT**

**I. Statutory Authority**

1. Section 309(a) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a), provides that, whenever the U.S. Environmental Protection Agency finds that any person is in violation of any condition or limitation which implements, *inter alia*, Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, the EPA may issue an order requiring such person to comply with such condition or limitation, and shall specify a time for compliance that the EPA determines to be reasonable.

2. The following Findings of Fact and Determinations of Law are made and this Administrative Order on Consent (AOC) is issued pursuant to the authority vested in the EPA, by Section 309(a) of the CWA, 33 U.S.C. § 1319(a), as amended. This authority has been delegated to the Regional Administrator of the EPA, Region 4, and further delegated by the Regional Administrator to the Director of the Enforcement and Compliance Assurance Division, EPA, Region 4.

**II. Findings of Fact and Determinations of Law**

3. To accomplish the objective of the CWA, as defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical, and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the point source discharge of pollutants into navigable waters except as in compliance with a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

4. Section 402 of the CWA, 33 U.S.C. § 1342, establishes an NPDES Permit Program authorizing the EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants into navigable

waters subject to specific terms and conditions. The EPA has granted the State of North Carolina, through the Department of Environmental Quality (DEQ), approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

5. A&D Services, Inc. (Respondent) is a corporation in the State of North Carolina and is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

6. At all times relevant to this action, Respondent owned and operated the following five Wastewater Treatment Plants (WWTP) in the State of North Carolina: High Vista Falls WWTP, Sherwood Forest WWTP, Hunter’s Glen WWTP, Mountain Valley WWTP, and Buffalo Meadows WWTP.

7. On November 1, 2015, DEQ issued NPDES Permit No. NC0089095 to Respondent for the High Vista Falls WWTP. Under this Permit, the High Vista Falls WWTP is permitted to discharge “pollutants” from a “point source” into Line Creek, a “navigable water” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7). The Permit became effective on November 1, 2015, and expired on October 31, 2020. The Permit is currently administratively continued.

8. On January 1, 2021, DEQ issued NPDES Permit No. NC0048658 to Respondent for the Sherwood Forest WWTP. Under this Permit, the Sherwood Forest WWTP is permitted to discharge “pollutants” from a “point source” into Little River, a “navigable water” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7). The Permit became effective on January 1, 2021, and expires on September 30, 2025.

9. On January 1, 2021, DEQ issued NPDES Permit No. NC0067288 to Respondent for the Hunter’s Glen WWTP. Under this Permit, the Hunter’s Glen WWTP is permitted to discharge “pollutants” from a “point source” into Shaw Creek, a “navigable water” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7). The Permit became effective on January 1, 2021, and expires on September 30, 2025.

10. On January 1, 2021, DEQ issued NPDES Permit No. NC0073741 to Respondent for the Mountain Valley WWTP. Under this Permit, the Mountain Valley WWTP is permitted to discharge “pollutants” from a “point source” into French Broad River, a “navigable water” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7). The Permit became effective on January 1, 2021, and expires on September 30, 2025.

11. On May 1, 2016, DEQ issued NPDES Permit No. NC0030325 to Respondent for the Buffalo Meadows WWTP. Under this Permit, the Buffalo Meadows WWTP is permitted to discharge “pollutants” from a “point source” into Buffalo Creek, a “navigable water” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7). The Permit became effective on May 1, 2016, and expired on March 31, 2021. The Permit is currently administratively continued.

12. The EPA issued a Notice of Violation (NOV) to Respondent on August 11, 2021. On September 8, 2021, Respondent met with the EPA to discuss the violations cited in the NOV and Respondent did not dispute the findings.

13. Based on the findings in the NOV, review of additional information provided by



DEQ, and discussions between Respondent and the EPA, the EPA determined the following:

- (a) For its High Vista Falls WWTP, Respondent exceeded the effluent limitations set forth in Permit Condition I.A.(1) of the High Vista Falls WWTP Permit, as self-reported in its monthly Discharge Monitoring Reports (DMRs). Specifically, Respondent reported 178 exceedances of the effluent limits for total suspended solids, biochemical oxygen demand (BOD<sub>5</sub>), fecal coliform, ammonia nitrogen, flow, and total residual chlorine for over the past five years. Therefore, Respondent violated the effluent limitations set forth in its High Vista Falls WWTP Permit.
- (b) For all five of its WWTPs, Respondent failed to electronically submit its monthly DMRs as required by Part I.A.(3).1 of the Mountain Valley WWTP Permit and Part I.A.(2).1. of the four other Permits. Specifically, Respondent failed to submit any DMRs for the Buffalo Meadows WWTP since August 2019 and submitted paper DMRs to DEQ staff for the other four WWTPs from January 2017 to the present rather than electronically submitting them through DEQ's Electronic Discharge Monitoring Report (eDMR) internet application as required by the Permits. Therefore, Respondent violated the DMR electronic reporting requirements set forth in each of its five Permits.

14. Based on the above, the EPA finds that Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and its Permits issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

### **III. ORDER ON CONSENT**

Based on the foregoing **FINDINGS OF FACT** and pursuant to the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), **IT IS HEREBY ORDERED AND AGREED TO** that Respondent comply with the following requirements:

15. Respondent shall, within sixty (60) days of the effective date of this AOC, submit all discharge monitoring data electronically using DEQ's eDMR internet application. For the Buffalo Meadows WWTP, Respondent shall submit the DMRs from August 2019 through the present via eDMR, as well as all future DMRs. For the other four WWTPs, Respondent shall submit all future DMRs via eDMR.

16. Respondent shall develop and submit to the EPA for review and approval the items described below to bring Respondent into full compliance with its Permits. Upon review of each item, the EPA may approve the item in writing or in the event the item is not approved, provide written comments to Respondent identifying any deficiencies. Within thirty (30) days of the date of receipt of comments identifying deficiencies, Respondent shall modify the item accordingly and submit the item to the EPA for final review and approval. Should the EPA determine that Respondent has failed to resolve any deficiencies, the EPA reserves the right to require additional revisions and resubmissions until the deficiencies are satisfactorily addressed. Resubmission of the item without adequately addressing the EPA's comments may be deemed a violation of this AOC. Respondent shall begin implementation of each item immediately upon receipt of the EPA's written approval of the items.

- (a) Corrective Action Plan: Respondent shall hire a professional engineer to evaluate the High Vista Falls WWTP and create a Corrective Action Plan (CAP) to address its

effluent violations. Respondent shall submit the CAP to the EPA within ninety (90) days of the effective date of this AOC. The CAP shall evaluate available options for compliance (i.e., tying onto municipal treatment, working with influent dischargers to achieve more desirable influent, adjusting plant operations to treat current influent, fixing broken appurtenances, etc.). Respondent shall select an option within the CAP for achieving compliance and set forth milestones and deliverables to achieve compliance as expeditiously as possible, but not to exceed two (2) years.

- (b) Operation and Maintenance Plan. Within six (6) months of the effective date of this AOC, Respondent shall submit to the EPA for approval an Operation and Maintenance Plan (OMP) addressing specific measures and procedures for the proper operation and maintenance of the High Vista Falls WWTP towards the goal of achieving compliance with all Permit limitations, including but not limited to:
- i. Instructions for daily operation, and a daily operation sheet for the operation of the WWTP.
  - ii. Preventative maintenance inspection instructions and schedule.
  - iii. Instructions for the dosing and timing of any additive(s).
  - iv. A schedule by which any new or existing personnel are trained on the OMP requirements.

Within thirty (30) days of EPA approval, Respondent shall submit documentation to the EPA demonstrating compliance with the OMP.

#### **IV. DOCUMENTATION AND REPORT SUBMITTAL**

17. Within thirty (30) days after the first quarter [three (3) months] of the effective date of this AOC, Respondent shall submit to the EPA written quarterly progress reports (Quarterly Reports). Respondent shall continue to submit such reports every three (3) months after submittal of the first Quarterly Report until the submission of the Final Report as set forth in Paragraph 22 below. Each Quarterly Report shall include:

- (a) a description of the actions which have been taken toward achieving compliance with this AOC during the previous three (3) months;
- (b) an assessment of the effectiveness of such actions in preventing effluent violations;
- (c) a summary of all effluent violations that occurred during the previous three (3) months;
- (d) an analysis of the cause of each such effluent violation; and
- (e) all monthly DMRs.

18. All reports, notifications, documentation, and submittals required by this AOC shall be signed by a duly authorized representative of Respondent as specified by 40 C.F.R. §§ 122.22(b)(2) and (d) and shall include the following statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate,



and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

19. All reports, notifications, documentation and submittals and other correspondence required to be submitted by this AOC shall be sent by registered mail, certified mail (return receipt requested), deposited with an overnight mail service, or email to the following addressees, as appropriate:

Ms. Laurie Jones  
Water Enforcement Branch  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
jones.laurie@epa.gov

Mr. Aubrey Deaver, President  
A&D Water Services, Inc  
P.O. Box 1407  
Pisgah Forest, North Carolina 28768  
admaint@comporium.net

20. Notifications or communications between the EPA and Respondent shall be deemed submitted on the date they are (1) postmarked and sent by registered mail, certified mail (return receipt requested), or deposited with an overnight mail/delivery service; or (2) emailed to the recipient.

21. When circumstances are occurring, or have occurred, which may delay the completion of any requirement of this AOC, whether or not arising from causes beyond the control of Respondent, including, but not limited to its consultants and contractors, despite Respondent's best efforts to fulfill the requirement, Respondent shall so notify the EPA, in writing, within fifteen (15) days after Respondent learns, or in the exercise of reasonable diligence under the circumstances should have learned, of the delay or anticipated delay. The notice shall describe in detail the basis for Respondent's contention that it experienced a delay, the anticipated length of the delay, the precise cause or causes of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented. Failure to notify the EPA shall constitute a waiver by Respondent of any claim for delay under this paragraph as to the event in question. If the EPA finds that a delay in performance is or was from causes beyond the control of Respondent, the EPA may extend the time for performance, in writing, for a period to compensate for the delay resulting from such causes.

#### **IV. FINAL REPORT AND TERMINATION OF THIS ORDER**

22. Within ninety (90) days after Respondent has satisfied the terms of this AOC by successfully completing all requirements in this AOC as set forth in Paragraphs 15 through 21, and establishing and successfully implementing for a period of six (6) months all the requirements set forth in Paragraphs 15 through 21, Respondent shall submit for the EPA's review and approval a

final report (Final Report) that includes: (a) a description of all of the actions which have been taken toward achieving compliance with this AOC; (b) an assessment of the effectiveness of such actions in eliminating effluent violations; and (c) an analysis of whether additional actions beyond the scope of this AOC are necessary to further eliminate effluent violations. If the EPA determines, after review of the Final Report, that all the requirements have been satisfied in accordance with this AOC, the EPA will provide notice to Respondent and this AOC shall be deemed terminated. If the EPA determines that any requirement of this AOC has not been satisfied, the EPA will notify Respondent, provide a list of the deficiencies, and may require Respondent to correct such deficiencies. If so required, Respondent shall correct such deficiencies and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to correct such deficiencies shall be a violation of this AOC.

## **V. GENERAL PROVISIONS**

23. Respondent's compliance with this AOC does not necessarily constitute compliance with the provisions of the CWA, 33 U.S.C. § 1251 *et seq.*, or with Respondent's Permits. Respondent shall remain solely responsible for compliance with the terms of the CWA and this AOC and its Permits.

24. Failure to comply with the requirements herein shall constitute a violation of this AOC and the CWA and may subject Respondent to penalties as provided in Section 309(d) of the CWA, 33 U.S.C. § 1319(d).

25. This AOC shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any other federal, state or local permit. Compliance with this AOC shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by the EPA.

26. Issuance of this AOC shall not be deemed an election by the EPA to forego any remedies available to it under law, including without limitation, any administrative, civil, or criminal action to seek penalties, fines, or other appropriate relief (including injunctive relief) under the CWA or any other federal or state statute, regulation or permit. The EPA reserves all rights and remedies, legal and equitable, available to enforce any violation cited in this AOC and to enforce this AOC.

27. This AOC applies to and is binding upon Respondent and its officers, directors, employees, agents, successors and assigns.

28. Any change in the legal status of Respondent, including but not limited to any transfer of assets of real or personal property, shall not alter Respondent's responsibilities under this AOC.

29. For purposes of this AOC, Respondent admits to the jurisdictional allegations set forth herein.

30. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which Respondent may have with respect to any issue of fact or law set forth in this AOC, including, but not limited to, any right of judicial

review of this AOC under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

31. Pursuant to Section 309(a)(4) of the CWA, 33 U.S.C. § 1319(a)(4), The EPA has sent a copy of this AOC to the State of North Carolina.

32. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this AOC.

33. Each undersigned representative of the parties to this AOC certifies that he or she is fully authorized to enter into the terms and conditions of this AOC and to execute and legally bind that party to it.

#### **VI. EFFECTIVE DATE**

34. This AOC shall become effective upon receipt by Respondent of a signed AOC.

**FOR A&D WATER SERVICES, INC.:**



Aubrey Deaver, President  
A&D Water Services, Inc.

Date: Jan. 17, '22

**FOR THE U.S.  
ENVIRONMENTAL  
PROTECTION AGENCY**

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Carol L. Kemker, Director  
Enforcement and Compliance Assurance Division

Date: \_\_\_\_\_